SUPREME COURT OF THE UNITED STATES.

NO. 433.

CHICOT COUNTY, Plaintiff in Error,

vs.

CHARLES E. LEWIS.

In Error to the Circuit Court of the United States for the Eastern District of Arkansas.

BRIEF OF DEFENDANT IN ERROR.

The only two questions to be decided in this case arise upon the demurrer of the Plaintiff below to the answer of the Defendant below; and they are these:

First—Under the act of the General Assembly of Arkansas, passed July 23, 1868, and entitled "An act to be entitled 'An act authorizing counties to subscribe stock in railroads,'" had the county of Chicot the power to vote and subscribe stock to the amount of $100,000 to each of two different railroads in Arkansas?

And, if not—

Second—Having voted and subscribed so to do, and having issued such bonds to two different railroads, and having put them on the market, without objection, can the county successfully defend against such bonds in a suit brought by a *bona fide* holder, for value, before maturity, and without notice of any irregularity,

upon the ground that the bonds delivered to either road, and to which road, were over issues?

The act referred to is as follows:

"*An Act to be entitled 'An Act to Authorize Counties to Subscribe Stock in Railroads.'*

"SECTION 1. *Be it enacted by the General Assembly of the State of Arkansas*, That any county in this State may subscribe to the stock of any railroad in this State, now chartered or incorporated, or which shall hereafter be chartered or incorporated, under and in accordance with the laws of this State, and may issue bonds for the amount of such stock so subscribed, with coupons for interest thereto attached, under such limitations and restrictions, and upon such conditions as the County Court may require, and the president and directors of such company may approve; *provided* that the amount of such subscription shall not exceed one hundred thousand dollars, and the consent of the inhabitants of such county to such subscription shall be first obtained in the manner hereinafter provided.

"SEC. 2. Whenever the president and directors of any such railroad shall make application to the County Court of any county for such subscription by such county to its stock, specifying the amount to be subscribed and the condition of such subscription, and one hundred voters of the county shall petition the Court for such purpose, it shall be the duty of the Court immediately to order an election, to be holden at the place and in the manner other elections in such county are holden, for the purpose of determining whether such subscription shall be made, and at least twenty days' notice thereof shall be given in the manner provided by law for other elections, at which election those voting for such subscription shall have written or printed on their ballots or tickets the words "for subscription" or "against subscription," and if a majority of the votes cast shall be in favor of subscription, the Court shall cause such subscription to be made, and upon its acceptance by the company, shall cause bonds to be issued in conformity with such vote, which bonds shall in no case bear a higher rate of interest than six per cent per annum,

and shall not be of a less denomination than fifty dollars, and shall be accepted by the company at their par value.

"SEC. 3. The County Court shall provide, by assessment upon the taxable property of the county, for the prompt and punctual payment of the interest on the bonds as it shall become due, which assessment or tax shall be collected as other taxes; and it shall also provide a sinking fund, consisting of the dividends upon said stock, and such other incomes, revenues and taxes as shall be deemed appropriate and sufficient for the payment of the bonds at maturity.

"SEC. 4. The coupons of such bonds shall, as they become due, be receivable in payment of all county taxes and dues.

"SEC. 5. This act shall take effect and be in force from and after its passage.

"Approved July 3, 1868."

1. The act itself authorizes this county, being one of the counties of the State, to issue bonds to *any* railroad in the State, chartered or to be chartered. The only prerequisites to such issue are contained in the second section of the act, and they relate to the manner of proceeding to obtain a vote of the people upon the question. All these forms have been complied with. The words "*any railroad*," in the first section of the act, are as broad as the words "*any county*," in the same section. *All* the counties can subscribe; and they can subscribe to *all* the railroads, if so the people vote. The word "any" means an indefinite number.—Webster's Dictionary, "*Any.*"

The act, when it says that any county in the State may subscribe, means all the counties may do so. And so, when it says any railroad, it means *all* the railroads. True, the act provides that the amount of *such* subscription shall not exceed $100,000; that is, the subscription (not subscriptions) named immediately before in the same section; and *that* subscription was a subscription to any railroad in the State. Therefore the meaning of the section is that no subscription to any individual railroad shall exceed $100,000. This view is clearly sustained by the second section of the act, which provides that "whenever the president

and directors of *any such* railroad"—that is, of any railroad in the State, one or many—"shall make application to the County Court of any county for *such* subscription by such county to its stock, specifying the amount," etc. That is to say, any railroad may make the application, one or many. When the county had subscribed to one road, say $100,000, its power to subscribe was not exhausted. For if in the first section "any county" means any one county, then "any railroad" means any one railroad. And then the act would read that any one county may subscribe to the stock of any one railroad in the State, provided *such* subscription did not exceed $100,000; that is, *the* subscription to any one railroad. And if any county could subscribe to any one railroad it could subscribe to all.

But if the true interpretation of this act is doubtful, it is rendered so by its language. When the language of a contract is ambiguous, the interpretation put upon it by the parties will prevail.

Aimen vs. Harden, Sup. Ct. Ind., in Cen. Law Journal, Oct. 18, 1878, page 306.

The same doctrine holds good in the construction of statutes. If their meaning is doubtful, the interpretation given to them by the acts of the parties is decisive.

21 How., 35, 36.

This county construed the act to mean that it could subscribe $100,000 to any railroad, one or more; and so this act was interpreted by other counties in the State, notably Phillips county. See Phillips County vs. Loomis, now pending in this court.

2. The remaining branch of the case is this, if I am not correct in my first proposition: Can the county maintain this defense of over-issue against a *bona fide* holder of one of these bonds? It will not be contended that the county could not have subscribed and issued $50,000 of stock to each of two railroads, making $100,000 in all. Then the other $50,000 to each of these roads was simply an over-issue. Now the bonds, upon

their face, all have this recital: "This bond is one of a series numbered from one to two hundred inclusive, of like date, tenor and amount, issued under an act of the General Assembly of the State of Arkansas, entitled 'An act to authorize counties to subscribe stock in railroads,' approved July 23, 1868, and in obedience to a vote of the people of said county at an election held in accordance to the provisions of said act, authorizing a subscription of one hundred thousand dollars to the capital stock of said railroad company."

Each of these bonds, to each of these roads, says that it is issued under this act, which authorizes the county to issue $100,000 to the road to which the bond is issued. Now a party takes one of these bonds with this recital and presents it for sale in New York. At the same time he presents to the purchaser a copy of the act of 1868. By that act the county had the power to issue $100,000 of its bonds to any railroad. The bond recites the fact that it was issued under this law. At the same time another party offers for sale in Boston a bond issued by this county to another railroad. It contains the same recitals. The same act is produced, as an authority for its issuance. Both parties purchase in good faith, for value. Which purchaser shall lose his bond? The one in New York or the one in Boston? Surely not both. If not both, then neither. And if afterward another party comes into possession of both these bonds, for value, in good faith, then the county cannot defend against either bond.

From the time of the decision in Knox County vs. Aspinwall, 21 How., 539, to the present day, the decisions of this Court have been uniform and unbroken, in holding that if under any circumstance, a municipal or quasi-municipal corporation has the power to issue its bonds, and the bonds recite upon their face that they are issued under an exercise of that power, then a *bona fide* purchaser, for value, is not required to look beyond the recitals in the bonds for proof of their legality. These are the cases:

Bissell vs. City of Jefferson, 24 How., 287.

Woods vs. Lawrence County, 1 Blk., 386.

Moran vs. Miami County, 2 Blk., 722.

Mercer County vs. Hackett, 1 Wal., 83.

Van Hartrop vs. Madison County, 2 Wal., 291.

Meyer vs. Muscatine, 2 Wal., 384.

Rogers vs. Burlington, 3 Wal., 654.

Pendleton vs. Amy, 13 Wal., 298.

Grand Chute vs. Winagar, 15 Wal., 355.

Lynde vs. County, 16 Wal., 6.

St. Joseph vs. Rogers, 16 Wal., 644.

Coloma vs. Eves, 2 Otto, 484.

Venice vs. Murdock, 2 Otto, 494.

City of Moultrie vs. Savings Bank, 2 Otto, 631.

Humboldt vs. Long, 2 Otto, 642.

Marcy vs. Oswego, 2 Otto, 637.

County of Randolph vs. Post, 3 Otto, 502.

Comms. Johnson County vs. January, 4 Otto, 104.

The case at bar comes directly within the decision of Marcy vs. Oswego, *supra*.

Whether there was an over-issue or not, was a question for the County Court. That court was to say, under the vote of the people, how many to issue, how many had been issued. If the county made an over-issue they are estopped from setting up that defense against this Plaintiff.

Beside, by the 14th and 15th sections of Chapter CXL of the Acts of Arkansas, passed in 1873, April 29, pege 479, the Auditor of State is authorized to register these bonds, and he did so, giving over his official signature the certificate which that

act requires (transcript of record, page 5), stating "that the bond is registered in his office according to law, and that it is *regularly* and *lawfully* issued, and that the signatures thereto are genuine." If the act amounts to anything, it, by law, establishes a tribunal clothed with the authority of deciding the genuineness, regularity and legality of these bonds. That tribunal has decided that they are genuine and lawful. It is submitted that a purchaser of such certified bonds thereafter is protected, and the obligors (who have had an opportunity to be heard before the Auditor, as they are required to send in to him a list of their bonds) are estopped from denying their legality.

EBEN W. KIMBALL,

For Defendant in Error.